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5 UNITED STATES BANKRUPTCY COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

7 IN RE: Case No. 09-13181

8 HOSAIN AZIZIAN, and Chapter 11  
FATEMEH H. AZIZIAN,

9 DEBTORS. / MEMORANDUM OF POINTS AND  
10 AUTHORITIES IN SUPPORT OF  
CONFIRMATION OF PLAN  
11 Date: August 11, 2010  
Time: 10:00 a.m.  
12 Place: 99 South E St.  
Santa Rosa, CA

13  
14 Hosain and Fatemeh Azizian, Debtors herein submit the following  
15 Memorandum of Points and Authorities in support of confirmation of  
16 their proposed Chapter 11 Plan:

17 1. The Absolute Priority Rule is inapplicable to individual  
18 Chapter 11 cases.

19 After passage of BAPCPA, the Absolute Priority Rule does not  
20 apply to individual Chapter 11 debtors. In re Shat (Bktrcy.D.Nv.2010)  
21 424 B.R. 854. Before 2005, the majority view was that the Absolute  
22 Priority Rule prevented an individual debtor from keeping exempt  
23 property or a business unless unsecured creditors were paid in full.  
24 The Rule often prevented debtors from confirming a plan in Chapter 11  
25 cases. Id.

26 BAPCPA, however, modified the Absolute Priority Rule to provide  
27 that individual debtors "may retain property included in the estate."  
28 "Included" means, not only property which is added to the estate under

1 Section 1115, but also property specified under Section 541. The  
2 reason is because, although Section 1129(b)(2)(B) makes a direct  
3 reference only to Section 1115, the latter Section itself references  
4 and incorporates Section 541.

5 Both BAPCPA's modifications to the Code and Congressional Intent  
6 support a broader reading of Section 1129(b)(2)(B) such that it  
7 applies to all property of the estate and has the effect of exempting  
8 individual debtors from the Absolute Priority Rule. 11 U.S.C. §  
9 1129(b)(2)(B)(ii); see also 11 U.S.C. § 1115; In re Shat, supra, 424  
10 B.R. 854, in accord In re Bullard (Bktrcy.D.Conn.2007) 358 B.R. 541,  
11 In re Tegeder (Bkrtcy.D.Neb.2007) 369 B.R. 477, In re Roedemeier  
12 (Bkrtcy.D.Kan.2007) 374 B.R. 264, In re Johnson (Bktrcy.N.D.Ind.2009)  
13 402 B.R. 851, 852-53, stating in dicta: "An individual debtor's plan  
14 does not need to satisfy the absolute priority rule..."

15 2. The Plan is feasible.

16 Section 1129(a)(11) provides that the Court shall confirm a plan  
17 if, amongst other things, the plan is feasible. 11 U.S.C. §  
18 1129(a)(11). "Feasibility" does not mean certainty. It is enough  
19 that the plan has a reasonable probability of success. Although the  
20 "feasibility" standard has been interpreted as excluding "visionary  
21 schemes," the *possibility* of failure is not fatal. See, e.g., In re  
22 Acequia, Inc. (9<sup>th</sup> Cir. 1986) 787 F.2d 1352, 1364-65; In re North  
23 Valley Mall, LLC (Bktrcy.C.D.Cal.2010) \_\_ B.R. \_\_, WL 2632017; Hobson  
24 v. Travelstead (D.Md.1998) 227 B.R. 638, 651. "The Code does not  
25 require the debtor to prove that success is inevitable or assured, and  
26 a relatively low threshold of proof will satisfy § 1129(a)(11) so long  
27 as adequate evidence supports a finding of feasibility." In re North  
28 Valley Mall, LLC, supra, WL 2632017.

The evidence will show that the Debtors' continued operation of the gas station will produce sufficient revenue to pay expenses of operation and to service the secured classes as well as to fund a dividend to unsecured creditors. The operation of the station is not dependant upon the cleanup of the contamination of the real property. Clean up efforts are in progress and monitored as required by law.

The valuation of the real property collateral of the objecting creditor will determine the payment. Based upon available evidence the payment will be between \$1,400.00 and \$3,800 per month.

The Debtors have demonstrated that the location can produce revenue and the evidence is ample that the business operation makes the proposed plan feasible.

Dated: 7/20/10

DAVID N. CHANDLER, p.c.

By: /s/ David N. Chandler  
DAVID N. CHANDLER,  
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